APPEAL NO. 022433
FILED NOVEMBER 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 29, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury on _____, and that she had resulting disability on February 12, March 5, and March 7, 2002. The appellant/cross-respondent (self-insured) appealed, asserting that the claimant was not in the course and scope of her employment at the time she sustained her injuries; that the injuries were not caused by any instrumentality of the employer and were idiopathic in nature; and that she therefore did not have disability. The claimant responded, urging affirmance of the injury determination. The claimant appealed the hearing officer's determination regarding the period of her disability. The self-insured responded, asserting that there is no disability because there is no compensable injury and in the alternative, if it is determined that the claimant did sustain a compensable injury, the period of disability should be affirmed as determined by the hearing officer.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence we will only consider the evidence admitted at the hearing. We note that we will not generally consider evidence not submitted into the record, and submitted for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the reports that the claimant attached to her request for review which were not admitted into evidence at the hearing. Although those reports were dated after the hearing, there is no showing that the claimant could not have obtained this information from two of her treating doctors at an earlier date; thus, they do not meet the requirements to be considered newly discovered evidence.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The self-insured argues that the claimant was not in the course and scope of her employment because she had parked in a parking lot other than the lot where she normally parked, in order to give her response to her performance evaluation to the principal and thus, she was not "engaged in or about the furtherance of the affairs or business of the employer." We find no merit in the self-

insured's assertion, that an employee's activity of returning a response to a performance evaluation to a supervisor is not an activity in furtherance of the affairs and business of the employer such that the claimant was removed from the course and scope of her employment at the time of her fall. It seems axiomatic that an employee's participation in personnel activities is within the course and scope of her employment.

We likewise find no merit in the self-insured's assertion that the claimant was not in the course and scope of her employment because she was parked in a parking lot other than the parking lot in which she typically parked. The "access doctrine" applies to this case. The general rule is that the benefits of the 1989 Act do not apply to injuries received going to and from work. The courts have created an exception to this rule known as the "access doctrine." In Standard Fire Insurance Company v. Rodriguez, 645 S.W. 2d. 534, 538 (Tex. App.-San Antonio 1982, writ ref'd n.r.e.) the court stated the following:

> When the employer has evidenced an intention that the particular access route or area be used by the employee in going to and from work, and where such access route or area is so closely related to the employer's premises as to be fairly treated as a part of the premises, the general rule does not apply. (Citation omitted).

In further explaining the "access doctrine," the Rodriguez court went on to say:

> The "access doctrine" further contemplates that employment include not only the actual doing of work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. (Citation omitted).

Under the "access doctrine," the hearing officer did not err in determining that the claimant was in the course and scope of her employment at the time of her fall and that, as a result, she sustained a compensable injury.

Finally, we find no merit in the self-insured's assertion that the claimant's injury was not compensable because it "was not caused by an instrumentality of the employer, and [was] idiopathic in nature." The claimant slipped and fell when she was exiting her car in the employer's parking lot. There is nothing idiopathic about such a fall and, contrary to the self-insured's assertion, it is not controlling that the claimant caught her

heel on part of her car before she fell as opposed to slipping on a part of the employer's premises.

In her cross-appeal, the claimant asserts error in the hearing officer's determination that she had disability as a result of the compensable injury only on February 12, March 5, and March 7, 2002. The question of whether the claimant had disability presented a question of fact for the hearing officer. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer was not persuaded that the claimant's compensable injury caused her inability to work after March 7, 2002. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's disability determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **A SELF-INSURED GOVERNMENTAL ENTITY** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge